Petition

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81-387

No. .....

In the Supreme Court of the United States

October Term, 1981

BURLEY L. MORRIS (pro se)
Petitioner, Appellant

VERSUS

CITY OF MIDLAND, TEXAS,
COUNTY OF MIDLAND, TEXAS,
AND STATE OF TEXAS
Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE ~~HONORABLE JUSTICES OF THE SUPREME COURT~~ U.S. Court of Appeals for the 5th Circuit

August, 1981

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IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

BURLEY L. MORRIS	)	CONSTITUTIONAL
(pro se)	)	TORTS
PETITIONER,	)	DIRECT VIOLATIONS
APPELLANT	)	OF CONSTITUTION
VS.	)	CAUSE NO.
CITY OF MIDLAND,	)	MO-77-CA-88,
TEXAS, COUNTY OF	)	APPEAL CAUSE
MIDLAND, TEXAS,	)	NO. 81-1039
AND STATE OF TEXAS	)	(Court of Appeals,
DEFENDANTS.	)	5th Circuit)

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT & CLERK:

COMES NOW PETITIONER, APPELLANT, BURLEY L. MORRIS, pursuant to Supreme Court Rules and the U.S. Constitution and files this Petition for Writ of Certiorari in the above named and numbered cause, complaining of exceptional prejudicial errors and wrongful dismissal of said cause in the Courts below, in which State of Texas was and is a party and for Direct Violations of my rights under the Constitution, and in which therefore the United States Supreme Court was obliged to have Original and Concurrent Jurisdiction under Article III, sec 2 of Constitution, and State of Texas consented and Petitioner would show:

JURISDICTION

I

1. *Grounds:* Order dismissing cause in the District Court is dated Dec. 18, 1980, is without opinion, states only that my complaint wholly fails to state a claim on which relief may be granted, citing *Monell v. Dept. of Social Svcs. of City of New York,* 98 S Ct 2018 (Appendix Item 1). U.S. Court of Appeals for 5th Circuit dismissal is dated May 19, 1981, evidences further dispute of facts, very exceptional errors, and further confusion on Courts' part (Appendix Item 2). They said that my cause was frivolous, the pleadings rambling, insufficient. They have misstated the facts and pleadings and have violently misadventured with Constitutional Law.

In response to 5th Circuit's stamp DO NOT PUBLISH on their dismissal I now place every one including that court and any Court on notice that I am not only a geologist, but an author and have been one since long before I became a geologist, which evidence is already plentiful in this cause and in H-79-811 & H-80-573; that said notice to me not to publish is unlawful as to any citizen, and on account of my being a writer is likewise abhorrant to the Constitution; that I will publish any time, any place, in the market place, my first hand account of any events including court's directives in this matter as is my Constitutional right of free speech and press. That order evidences plain prima faciae prejudice against my cause, is likewise unlawful under the 1st

Amendment as exercising discretion in a matter concerning Speech and access to Courts, where no discretion is allowed. The 5th Circuit helped cost me $250,000.00 in 1974. Nobody tells me how to think or write or how to speak, let alone gives me orders. Their remedy is not to be party to the wrongs done me - not try to order me in any respect concerning speech.

The cause was not filed under 42 USC 1983 only as they and District Court misstate. There now exists a host of disputed fact questions which by 7th Amend. require consideration by a jury, especially due to the very exceptional error on part of both U.S. Courts below. The 5th Circuit Court's ruling conflicts with prevailing Supreme Court decisions: *Owen v. City of Independence, Mo. et al* No 78-1779, ___ US ___, *Scott v. Plante* 532 F 2d 939, *Mackey v. Procunier* 477 F 2d 877 and a host of others included in this Petition. The DO NOT PUBLISH stamp order completely departs from any known Constitutional Law or procedure, and besides the above, according to the pleadings throughout, the Supreme Court, under Article III, sec 2 of the U.S. Constitution, in all equity and at law, had original jurisdiction, since the State of Texas was and is a party, and by their consent; the U.S. Court retrieved them, wrongly, and in prejudicial error.

2. The U.S. District Court (Midland-Odessa, TX) on July 30, 1980, following recommendation in Magistrate's Record and Findings (Item 43, pp 000196-198

of Record) (Appendix Item 3) ordered me to file an amended complaint clearly stating a factual basis supporting my claim (I had already filed a clear claim in the Original Petition, contained herein) which I did, and in which I objected to the dismissal of State of Texas, or any Defendant. Magistrate had obviously ignored the Original Pleading of Sept. 15, 1977 (Item 1 pp 000001-000004 of Record). The 5th Circuit makes the same very exceptional and prejudicial error, plus a world more, remarking on rambling insubstantial claim. It is no fault of mine that Tort is tort, meaning twisted acts. To describe the circuitous labyrinthine tangle of misdeeds involved in this case is like tracking snakes on the order described in *Mapp v. Ohio* 367 US 643 and *Owen*, especially as to swap jobs, shopping around across the street technique. I described the events, the facts, with sufficient clarity alright, the Courts' simply wish to cover up the government's own wrongs implicit throughout. Anybody can get confused if they try hard enough to get confused. Why do you suppose the Constitution exists? It exists in order that such things as have been done to me would not be allowed, so there would be a highest law of the land, above the influence of mere political dispute, so to protect people from government in which jealous factions empower themselves as God.

THE STATUTES CONFERRING JURISDICTION ON THE SUPREME COURT ARE:

1. U.S. Constitution Article III, sec 2: "The judicial

Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction· — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming lands under Grants of different States, and between a State, or Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make . . ."

2. 28 USCA 1254: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

3. 28 USCA 1651 Writs (a) "The Supreme Court and

all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

ISSUES TO BE CONSIDERED FOR REVIEW

I

1. As plead, the obvious jurisdiction was by Article III, Sec 2 of the U.S. Constitution and by 28 USC 1331, the State of Texas being a party, and there being involved unconstitutional application to me of unconstitutional State laws. The obvious reason for dismissals is to cover it all up, keep me out of court, suppress my own story and the truth, as I have claimed. I have been unable as yet to obtain any attorney, and I refused to be coerced under the single statute 42 USC 1983 and jurisdictionally thereby solely under 28 USC 1343 since, although that statute is involved, it did not, does not completely fit the facts, the fact allegations made nor afford me the complete legal remedy, especially inasmuch as said allegations raised issues of and alleged direct violations of my Constitutional rights of Amendments 1, 4, 5, 6, 7, 8 and 14, plus the evidence, pleadings and allegations more particularly supported, and so as to include all defendants above named, cause of action based on wilful, knowing, wrongful, malicious and conspiratorial unconstitutional application to me of unconstitutional Texas Statutes as pertains to committment of so-called mentally ill or incompe-

tent persons. (See file Items 40-42, pp000172-195 of Record).

2. The cause came under not only 42 USC 1983, but also under 42 USC 1985, 42 USC 1986 and test of Constitutionality of Texas Laws and their unconstitutional application to me of: Articles 5526 Vernon's Ann. Civil Statutes, Art 5535 VACS, Articles 5547-83 VACS sec 1 (amdd 1959). The direct violations of Constitution evidenced political policy rather than consideration of the Constitution at every step in the series of events, and at every political level involving all the defendants named. The nature of all events in Midland prior to and including the 1974 Sanity Hearing, and elsewhere in the State, the testimony from expert witness Dr. Harrison, administrative head of Big Spring State Hospital, and others, especially doctors in town, establish a predetermination of mental illness, and of what was going to happen to me at the hearing (1974 hearing, the only sanity hearing here under consideration. In Texas there never was any other) regardless of mental illness or lack of it. Those events evidence that, dating from 1970 events, everything was solely in the hands of administrative officials and State of Texas, County of Midland, Texas and City of Midland, Texas police policy makers. As in *Baxstrom v. Herold* 380 US 107, 15 L Ed 2d at 624: "Having made such a finding, the decision whether to commit that person to a hospital maintained by the department of corrections or to a civil hospital is completely in

the hands of administrative officials." So was I, and so was my Objective hard evidence which refutes any claim anywhere of mental illness, i.e. the test in government's hands -Minnesota Multiphasic Personality Test —See Statements in facts argument herein. (Appendix Item 4 f/H-80-573.)

In fact, as I claim, beginning in 1963, absent punishment and torture as a political prisoner in nuthouses because I exercised the right of speech, there never existed any reason to jail me in Midland or anywhere else in the State during the years following 1969, and never was there any reason to commit me or place me in any mental institution anywhere.

2.(a) This was the substance of Original Petition and the facts, which raises the issues to be considered for review. They are expanded in the pleadings, the Appeal and herein. Included in which case were the transcript of hearing of U.S. Dist. Ct - Midland, of June 20, 1978 (Item 25, pp----?) and my Corrections to Transcript (Item 27, pp 87 - 88 of Record) (Appendix Item 5). The Corrections first two pages should be included as part of the record; an omission which is prejudicial and wrongful to me. Their omission is judicial censorship in violation of 1st amend. and 14th amend., also of 6th and 7th. In the file, the Court should also note all the record including evidence, my appearances, Motions, Submittals, and note also that I have endured continuous harassment for 9 years, poverty, blackball, attempts on my

life, and have been running obstacle courses which endanger my life to make those appearances, motions, get the evidence to the courts, plus note also that during all of which time I have been "bugged" by unlawful electronic device, and finally as along the lines I indicated in the companion cause H-79-811, H-80-573 during all of which, the media has expanded the most munificent criminal-civil plagiaristic and libellous smear and scam of myself, invasion of my privacy, that you or I have ever heard of, and to present day. I have stacks of evidence including tapes. They are making millions of crooked dollars out of me. To which the 5th Circuit tells *me* not to publish. I guess I will publish and I dare anyone to try to stop me, or to prevent me access to any court, so that the truth can be found by a jury.

2(b). The Original Petition should by all reason go here or before now, but due to the Rule 23 order is deferred to the section following argument of Case. It shows clearly the issues of Direct Constitutional Tortious Violation of my rights under Amends. 1, 4, 5, 6, 7, 8 and 14. Please go ahead and read it first, or you may also get confused.

II

As per 42 USC 1983 only, and according to *Monell* supra, and *Owen* which was decided April 16, 1980, *Owen* is on a more similar fact situation to my case. They hold only municipalities liable for damages for unconstitutional Tort. But that is not the complete case or fact situation. See also *Morris v.*

NBC et al, U.S. with 5 USC 552, 552a claim regarding test abovemention in U.S. District Court - Houston (Item 6 Appendix - Orders of Court to date). *Scott v. Plante,* 532 F 2d 939(CA 1976 - it all began for Scott in 1968, into Dist Ct in Jan. 1974), at 940 says "Complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of claim. FRCP rule 12(b)(6) of 28 USCA." Also at 940 "Claim by person committed to state psychiatic hospital as having been insane at time of commission of alleged crime, to effect that he had been forced to take drugs and other treatment against his will and without consent of any family member stated cause of action under Civil Rights Act of 1871 and Fourteenth amendment." per 42USCA 1983, and in my case also 42USCA 1985, 1986 and amends. 4, 5, 6, 7, and 8. See *Griffin v. Breckenridge* 406 US 88 (1971). And, "absent emergency, unconsented to medical treatment is a tort." *Winters v. Miller* 44 F 2d 65, cert denied 404 US 985(1971), *Dunham v. Wright* 423 F 2d 940(CA3 1970). Again in *Scott* at 940 "Involuntary administration of drugs which affect mental processes may, under the appropriate set of facts, amount to interference with First Amendment rights or right to bodily privacy." Certainly the set of facts in my case includes such a set of facts. So neither should my complaint be insufficient, nor my cause be dismissed. See also *Roe v. Wade* 410 US 113 and my Original Pleading.

III

Further as to Sufficiency and Due Process: "In event that person committed to state psychiatric hospital as being insane at time of alleged murder (in my case the false charge of assault on Police Officer - a felony) had never been adjudicated incompetent incapable of giving informed consent to medical treatment, due process would require, in absence of emergency that some form of notice and opportunity to be heard be given to such individual or to someone standing in loco parentis to him before he could be subjected to involuntary medication." There never existed any emergency in my case, especially not in 1970. No consent was ever given, and if I consented, it was under coersion or torture and influence of wrongfully administered drugs in any case: USCA Const. amends. 1 and 14 apply here, plus direct violation of amend. 8. Also in *Scott:* "Issue respecting cruel and unusual punishment was potentially raised by allegations of person committed to state psychiatric hospital, as having been insane at time of alleged commission of murder, that he was subjected to involuntary medication." At 942: "dismissal of habeas corpus application (release standard or reinstatement per Texas laws) application by person committed to state psychiatric hospital as having been insane at time of alleged commission of murder, on grounds of lack of exhaustion of state remedies, was improper where there was serious question whether corrective process available in state courts

was effective by federal standards." In my case questionable constitutionality of Texas Statutes as appled with respect to remedy per Statute of Limitations on tolling disability of incompetence or mental illness makes up unequally appled standards.

At 941: "Valid claim for relief was stated by allegations of involuntarily committed state psychiatric hospital patient that New Jersey release proceedings were constitutionally inadequate. NJSA 2A: 163-3." See Texas' Statutes constitutionally inadequate standards VACS 5526, 5535, 5547-83 herein. The Texas County Court's process on these Texas Laws is defective because the laws are unconstitutional, there was in fact unconstitutional application of them to me, and done by use of special knowledge as to those laws in violation of 42 USC 1985, 1986 and Amends. 4, 5, 6, 7 and 14. The release or reinstatement proceedings, and especially the tolling disability of incompetency question were monopolized in said proceedings, hearing 1974. The policy itself is expressed in the false criminal charge made against me. They needed that kind of charge, i.e. violent, dangerous to society and to a police officer, and really nutty; supports violation of 42 USC 1985, 1986. As part of the policy, I was dealt with as a prisoner to be punished. And it was the policy that lawyer Edwards was not to tell me about the papers from Albuquerque VA hospital, nor did he tell me that I could not get the Minnesota Multiphasic Personality Test or Summary, nor that the papers were

rubber stamped (like 5 CA order) with instructions for him to withhold from me the summary and graph results of the test, all when I was and am the holder of privilege as between doctor and patient and as between lawyer and client. This discovery of his part in withholding and the rubber stamp order was made last year in H-80-573 *Morris v. . . . . US* in 28 USC 552, 552a claim. It is a policy noted elsewhere. As in *Scott* ". . . that it was policy of prison hospitals, when dealing with prisoners who suffer from psychiatric maladies, not to reveal contents of medical records . . ." In my case it violates amendments 6 and 7 of the U.S. Constitution, and 5 USC 552, 552a, plus of course the Model Code of Evidence rules. Thus *Scott* is a blueprint for those who would know how to use the information therein, to manage to avoid being caught in doing what was done to me, and goes to special knowledge issue. Numerous doctors and officials were involved in it, as with me; it cites also *Thomas v. Brierly* 481 F 2d 660(*CA3* 1973) regarding insufficiency, *U.S. ex rel Tyrell v. Speaker* 471 F 2d 1197 (*CA3* 1973), *Gray v. Creamer* 465 F 2d 179(CA3 1972).

IV

Further as to Sufficiency of Complaint: In *Scott* at 945 "summary judgment may only be granted if, taking the non-movant's allegations as true and drawing all inferences in his favor, court is convinced from its review of the evidential sources available that no genuine issue as to any material

fact remains for trial, and that the moving party is entitled to judgment as a matter of law." *U.S. v. Diebold, Inc.* 369 US 654(1963) per curiam, *Tomalewski v. State Farm Life Ins. Co.* 494 F 2d 282(CA 1973). The material fact question necessitating jury consideration, aside from damages issue in tort, in my case is the disability resultant from Electro Shock Therapy (hereinafter ECT) as a cause specifically of incompetency, as based on the Texas VACS laws below. This consideration was ignored at the hearing in 1974 in spite of the fact that doctors, lawyers, and the public, and surely anyone who has had them, generally know and regard it as just such a kind of cause of incompetency, owing to the loss of memory that results from its use. Therefore the dismissals are wrong; my pleadings were and are sufficient to state a cause of action.

As to Involuntary Medication Claim: the Defendants' responses have not in any wise dealt with my charges of being forced to take mind altering drugs without consent; thus as in *Scott* at 946 ". . . for present purposes we must take Scott's assertion as true, and we can affirm the award of summary judgment only if we conclude, as the district court did, that an allegation of the involuntary administration of psychotherapeutic substances does not state a cause of action under 42 USC 1983 (or 1985, 1986 in my case) and amends. 8 and 14". The U.S. District Court's and 5th Circuit Court's dismissals must "conclude that it is inconceivable that involun-

tary administration of psychotherapeutic substances (as with me in BSSH 1970, 1974, TRIMS 1972) could also establish a constitutional deprivation." To which *this* Circuit Judge says: "We cannot agree with this conclusion." In my case with ECT include also the shots before the program itself was begun, Thorazine, then the one given in conjunction with ECT, and other wrongful medication Haldol, Prolixin. I am reasonably sure it was Thorazine the first 2 or 3 days in BSSH in 1970, could have been Haldol, but it was Etrafon Forte pills in 1974 and some kind of shots which caused me severe convulsions for 2 days at a time so that I could only shuffle around, could not straighten my mouth and tongue from being convulsed to one side, could not straighten up my body to walk. My mouth kept jerking to one side up against the stop of my jaws from the shots in 1974 - about 4 of these. In 1970 after ECT and for 1 year I had Prolixin shots, 1 every two weeks, the ECT and shots both resulting in gradually diminishing severe convulsions or spasms in bed at night or anytime in bed for 6-7 years. Therefore, again, District Court and 5th Circuits orders are contra other Circuit Court and prevailing Supreme Court decisions.

The dismissals are improper on my 1st and 8th amendment claims. See note 9 *Scott* at page 946: "A possible fourth constitutional deprivation might include invasion of inmate's right of bodily privacy which has been adumbrated in various Supreme Court decisions. e g *Roe v. Wade* 410 US 113, 152-153,

(1973)." Such, in fact, is my claim under the facts stated in the Original Petition, and which also raised the issue of malicious tinkering with mental processes and torture of cruel and unusual punishment Amendment 8 violation involving "mind control" experimentation on me as a "pilot project or guinea pig". *Mackey v. Procunier* 477 F 2d 877 (*CA9* 1973) and *Kaimowitz v. Dept. of Mental Health* Civ No 73 - 1934 AW(Mich Cir Ct Wayne County, July 10, 1973). In *Mackey* p 877, patient was given a "fright drug" similar at least to that which they gave me in 1970 with ECT (include Etrafon) in BSSH and as the prep for said shock treatment. Prolixin is a worse drug, should be removed from use since it induces convulsions, spasms and dangerous depression. I had 7 such shots plus the 7 ECT's in BSSH in 1970 all of which above place in issue direct violation of the Constitution against me.

In *Mackey v. Procunier* 477 F 2d at 878 with notes 1 and 2 ". . . asserted that defendants are (were apparently in my case) engaged, without patient consent (or knowledge - my case also) in a course of medical experimentation to ascertain (in so-called aversive type therapy) whether, by instilling of pain (a certain feature of ECT and the herpes simplex thru 1974) accompanied by psychological suggestion, behavior patterns can be affected." I am convinced of this with me, that it was part of my torture and punishment for not admitting to some crime or sickness that I have not done, or don't have, or to

some lie that I needed help for my "supposed problem" and "speech defect". And the evidence, allegations and pleadings raise this actual issue in MO-77-CA-88 and by reference in H-80-573. It is after the fashion, if not verily the fact involved in MK delta and MK ultra experimentation, (outlawed for sure since 1963), which in Albuquerque VA Hospital in 1968-69 had the mild nomer of "millieu" therapy. But the techniques were brainwash or mind control as I have claimed, torture, aversion therapy, punishment, sometimes with the apparent goal to make of me some kind of sexual deviate or otherwise neutralize me as in *Skinner v. Oklahoma* 316 US 535, 1941, and with a goal of mind control in which the treatments in BSSH in 1970 and 1974, in VA hospitals, ECT, Prolixin, the herpes connected with TRIMS in 1972 all figure prominently. As to ECT, and any mind altering drugs, there is no doubt in my mind about it, none. I fear it and psycho-drugs like anyone would fear and dread death itself, but with the added understanding of what torture and inquisition is all about.

"Proof of such matters could in our judgment raise serious constitutional questions respecting cruel and unusual punishment or impermissible tampering with mental processes" *Mackey* at 878. It is more than that with me; it involves serious violation of Amendments 1 and 8 and one more at least, and that is the grissly business of self incrimination through torture in violation of amendment 5 of the

Constitution and 42 USC 1985, 1986. These are issues before this Court. The lower courts are wrongly opposed.

There can be no doubt in my mind and at law that defendants were on notice as to the nature of my claims and have now with the aid of U.S. District and 5th Circuit Courts' dismissals, and by other violations of the 1st and 14th amendments on part of the government, tried to cover it up. *Mackey* at 878.

AS EVIDENCE OF THE ABOVE: The dual standard for commitment per Texas laws especially relates to the running of Statute of Limitations or its tolling disability caused by act complained of. By Defendants' account, VTCS Ann Article 5526 Statute of Limitations obviates wrongly the application of ECT as an incompetency producing disability which would otherwise toll said Statute. The proceedings in my case denied its consideration; it is said to run from the time of the act complained of. ECT, in 1970, the very nature of it, was not ever considered at the hearing in 1974, and because of how it was so obviously, wrongly caused to be done to me then. Its nature is to cause a temporary or sometimes permanent disability, loss of memory, an incompetence the consideration of which by a jury would have likely resulted in a different commitment outcome (or no commitment) in 1974 as to toll the Statute of Limitations, and make possible my remedy at law. Neither Court below reached this

serious consideration and the Supreme Court now should. It is up to you therefore, and because you have the authority to grant or issue the writ of certiorari to review the cause and consider that issue.

V

FEDERAL STATUTES INVOLVED: Complete and Pertinent parts:

1. Amendment I U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. Amendment IV U.S. Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

3. Amendment V U.S. Constitution: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

4. Amendment VI U.S. Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

5. Amendment VII U.S. Constitution: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

6. Amendment VIII U.S. Constitution: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

7. Amendment XIV U.S. Constitution: "Section 1. All persons born or naturalized in the United States,

and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

8. 42 USC 1983: "Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, suit in equity, or other proper proceedings for redress."

9. 42 USC 1985: "Conspiracy to interfere with civil rights. (1) . . . (2) . . . (3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or

hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

10. 42 USC 1986: "Neglecting to prevent acts wrongful under sec 1985 . . ." is liable in action for damages, as in 1985.

STATE STATUTES INVOLVED (TEXAS')

1. Article 5526 VACS: "there shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in Court of the following description; . . . 6. Action for injury done to the person of another."

2. Article 5535 Vernon's Tex Civ Statutes Ann (VACS also) says that "if a person entitled to bring any action mentioned in this subdivision of this title be at the time the cause of action accrues either a minor, a married person under twenty-one years of age, a person imprisoned or a person of unsound mind, the time of such disability shall not be deemed a portion of the time limited for the commencement of the action and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title."

3. Articles 5547-83 VACS sec 1 says:

"(a) The judicial determination under this Code that a person is mentally incompetent creates a presumption that the person continues to be mentally incompetent until he is discharged from the mental hospital or until his mental competency is redetermined by a court.

(b) The judicial determination that a person is mentally ill or the admission or commitment of a person to a mental hospital, without a finding that he is mentally incompetent, does not constitute a determination or adjudication of the mental competency of the person and does not abridge his rights as a citizen or affect his property rights or legal capacity.

(c) When any person under the provisions of this Code shall have been committed as a patient to a mental hospital, for any period, regardless of duration, by order of a county court, and shall have been discharged and released by such hospital, such person may file application with such county court for an order adjudicating that he is not now mentally ill or incompetent, to which application shall be attached a certification attesting to such facts, signed by an attending physician at the hospital to which such patient was committed. The court may enter an order granting such application; but, in connection therewith, he may conduct a hearing and summon such witnesses as in his judgment may be necessary to satisfy him as to the merits of the application. (As

amdd Acts 1959)." Over my dead body.

4. Article of Sec 3 Probate Code of Texas defines "incompetents" or "Incompetent Persons":

"are persons non compos mentis, idiots, lunatics, insane persons, common or habitual drunkards and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs." . . Concerning which *Swink v. City of Dallas* 36 SW 2d 222, 1931, where unsound mind and incompetent are used interchangeably, says "the presumption of state law is that without a finding of incompetency, you are considered by commitment to a Mental Institution to be competent."

VI
STATEMENT OF THE FACTS MATERIAL TO CONSIDERATION OF QUESTIONS PRESENTED:

1. As to the immediate above erroneous commitment presumption: The fact in my case is that in 1974, in the hearing, I was incompetent due to loss of memory, a disability caused by wrongful act of State of Texas' doctor in 1970 through 7 ECT treatments, and also from the cruel and unusual punishment from torture of body and mind while in jail the 115 days in 1974 just prior to the hearing. The 5th Circuit Court in *Swink* did not reach the question of occurrence of disability on the same day, and apparently never has; So it is an area of special concern for the

Supreme Court in this case. It is analogous to disability (incompetence) being caused by act complained of, which is exactly what happens with ECT instantaneously, and for 6 years with me, and which other states recognize to ameliorate the harsh effect said act complained of produces which is loss of memory by ECT. In *Swink,* "the legal disability must be of such nature as to show him unable to manage his business affairs or estate or to comprehend his legal rights or liabilities." To know your rights is impossible without memory. Without it you are at law and in fact under a disability. I was for 6 years. Defendant Texas argued that "there are *strong policy* reasons for supporting this position," Texas' Brief on Issue of Alleged Tolling of Statute of Limitations of July 24, 1978. As underscored, therein is the admission of State, County, and City of Midland policy, and it was the blueprint in my case; Texas relied on *Kenosho v. Bruno* in that brief. The State's very appearances, briefs, answers etc. is evidence that Texas consented to be a Defendant party. All the pleadings confirm. The Magistrate (U.S.) and U.S. Courts retrieved them — typical shopping across the street M.O. as in *Mapp & Owen.*

2. *In Answer:* The mere saying that one does not lose his rights does not make it so, and the "mere characterization of act of administering drug (or ECT, or virus infection by graft-on etc.) does not insulate act from 8th Amendment scrutiny." *Knecht v. Gillman* 488 F 2d 1136(CA 1973). In any event,

competency as affected by ECT is and was a jury question which has never yet been presented to a jury, including especially the Hearing of 1974, now again in this case on appeal. That is, whether or not it creates a tolling disability in view of such laws and their application requires the incompetency producing results of ECT (and mental torture), but especially ECT be presented to a jury, and in this case now per amendment 7 USCA Constitution. Thus, the District Court and Circuit Courts' dismissals are both improper. The very nature of resultant incompetency from ECT is loss of memory, which issue was raised at the hearing owing to my fear of it (in 1974), again in this case, has never yet been addressed to a jury, but was and is now brushed aside as a policy saying it should be brushed aside, on the basis of Texas laws, or, in other words, so they could stay out of trouble, and in my case, do to me as they pleased and get away with it.

3. *Regarding: Cover Up of events in 1970 and ORIGINAL PLEADING:* My Original Petition to U.S. District Court was pro se, since of course I could get no attorney then either, was directed to Midland by Magistrate in Ft. Worth in 1977 (Appendix Item 7) and is as follows: "Plaintiff Burley L. Morris alleges that on or about April, 1970, he was wrongfully falsely arrested by Sheriff's Deputy of Midland, Texas, and without interview with doctor, lawyer, judge, jury, or any papers for cause to be so arrested, was taken into custody of County of Mid-

land, Texas wrongly against my Constitutional rights, Amend. 4, and shortly, about 30 minutes, later was wrongfully abducted to be falsely imprisoned and was falsely imprisoned in Big Spring State hospital (hereinafter BSSH), Big Spring, Texas where he was illegally and wrongfully given a heavy tranquilizer, and shortly thereafter was wrongfully, against my will and consent (as are all the acts done to me above enumerated) malpracticed on further by being forced to undergo 7 electric shock treatments on order of Dr. Kreimyer attending physician; all done in violation of my constitutional rights as under Amends. 1, 4, 5, 14 etc., and against my person damagingly and unnecessarily without any testing or diagnostic procedure to qualify any need for said treatments, not only the electric shocks but all the tranquilization before and after; all done without reason in an unreasonable tortious wrong to my person, all of which seriously damaged me in mind and body in addition to wrongs to my person, privacy and the like under Constitution U.S. There was no treatment in false imprisonment indicated except my release, but I was kept for said wrongful malpractice imprisoned against my will so that the wrongs could be done me, as if to 'help' me. The same seriously disturbed and damaged my mind and inhibited my naturally healthy mind and body for several years; As a direct result of the electro shock treatments (hereinafter ECT), I lost my memory for a long time; It has taken between 3½ and 6 years to

recover what I believe now is all of my memory back. Said loss of memory is in fact the direct means which prevent me . . . further rights which included not only being unable to remember the ECT, but the events and rights involved in the circumstances of receiving them. Said memory loss is in fact the exact proximate cause preventing me from knowing that I had found an oil field in Dawson County, Texas - Blk 36, T4N, T & P RR Survey, Sections 28, 27, 21 . . . etc. in 1967, that said Overriding Royalty Interest was lost through fraud at the time of the discovery, and that my recovery at law which I tried ever since and including 1967, for my rights as according to legal agreements and documents assigning me the interest from Cockrell Oil Corp. of said 1/24 of 8/8, ORRI was lost. (Item 40, pp000182-185 of Record. I have other substantiating documents.) There have been other subsequent damages of equally serious nature, but the ORRI is and was at the time worth $250,000.00 and I have never been allowed to sue for it (5th Circuit Court dismissed my 1974 attempt MO-74-CA-16) and for other things including my rights under the U.S. Constitution, though it has been no fault of mine that I could not bring suit. I have tried every year since and including 1967 (to get a lawyer) but through direct wrongful intervention of State of Texas including further wrongful False imprisonment Midland 1974 (subsequently Sanity Hearing of Sept. 21, 1974) city-county, and false imprisonment 115 days there, and at BSSH, and malpractice there

again in 1974 (BSSH) - following hearing 1974, and 115 days false imprisonment in Midland just prior) when I was specifically attempting to bring suit, again I was not permitted, but was wrongfully *punished* by same mentioned for trying. The same in TRIMS in 1972, Houston.

I hereby challenge the record everywhere of my so-called mental illness, and/or alcoholism, I never had any such illness at any time. It is (the record of same) false in every regard indicating I have now or ever had any kind of mental and/or emotional disturbance, or alcoholism requiring hospitalization or treatment of any kind, any and all therapy included. The record has been and is falsified, criminally stolen, manufactured, and is otherwise totally false" . . . Thereafter is listed damages from ECT, two false imprisonments and from malpractice in BSSH, false imprisonment and malpractice in TRIMS, all versus State of Texas. Damages for which City-County Midland, Texas are liable are then listed for false arrest and abduction, false arrest and false imprisonment in which also is included, in the 115 day jailing on false felony charge, "wrongful torture, cruel and unusual punishment, and mind torture" . . . and reference also to malicious prosecution on the dismissal of the false criminal charge. . . Finally citing jurisdiction according to State and State Officials a party under Article III, Sec 2 of U.S. Constitution, for Supreme Court Jurisdiction, and under Title 28 USC 1331.

These pleadings clearly raised issues of direct unconstitutional and tortious violation of my rights under Amends. 1, 5, 4, 6, 7, 8 and 14 and the Magistrate, District Court (U.S.) in Midland had every reason to know it, so they ignored them.

4(a). In *Jackson v. Indiana* 406 US 715(1972), 92 S Ct 1845, the issue is very similar. The procedure of my commitment as mentally ill to BSSH subjected me to a more lenient commitment standard and a more stringent standard for coming under disability tolling the Statute of Limitations, in spite of what would have proved to be evidence toward a commitment as temporarily incompetent from ECT or no commitment at all, owing to the disability resultant of ECT done me in 1970, — the standard available to all others. As the 5th Circuit said, by Texas Law, the Statute of Limitations begins to run on the commencement of the wrong, and once it starts, even an intervening disability will not stop it. When disability is caused by act complained of that statute or that interpretation of it is unconstitutional. It violates, in its application, also amendments 6, and 14 due process and equal protection, and 42 USC 1983, 1985 and 1986. These people, all involved, must be assumed to know and to have known the applicable Texas Law, as is evidenced from the way the entire episode progressed; see *Mapp & Owen,* and thus deprived me of a remedy for Unconstitutional tort wrongs, denies me now by dismissals access to Courts in violation of 1st amend. and on 8th

amendment claim. Said incompetence itself, by ECT, was occasioned by wrongful unconstitutional act of State Hospital doctor in 1970 when, in fact, I was not then or at any time committable as mentally ill. See *Baxstrom v. Herold* 383 US 107 and *O'Connor v. Donaldson* 422 US 563. State, local and federal policy enhanced this erroneous severely damaging result.

4(b). Such process in my '74 hearing was ineffective to protect my Constitutional rights; *Scott v. Plante* supra at 948; and the District Ct's and 5th Circuit Court's dismissals do not try to address the above enumerated issues. "No one may be deprived of his liberty and stigmatized by confinement unless all elements of the case against him have been proved beyond reasonable doubt." *Scott* at 949. Obviously I was deprived of life, liberty and property without due process of law in violation of Amend. 14 and 1, 6 and 7; I was denied evidence to defend myself, both as to criminal charge before it was dropped, and after.

5. To *Sufficiency of Complaint:* comparing *Jackson v. Indiana* supra to my case:

5(a). "Under the equal protection clause, the mere filing of criminal charges against a person is insufficient to justify less procedural and substantive protection against indefinite commitment in a mental institution than that available to all others."

5(b). "A state deprives an accused of equal protec-

tion of the laws by committing him to the State Dept. of Health until he is certified sane, because he lacked comprehension (due to ECT etc.) to make his defense (withheld Test proving I was not nuts from Albuquerque VA Hospital), while civilly committing persons as mentally ill . . . only on a showing that the individual is in need of care, treatment, training, or detention, and civilly committing persons as feebleminded only when they are unable properly to care for themselves, and permitting the release of persons committed . . . etc."

5(c). "At least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which individual is committed." My commitment did not.

5(d). In *Baxstrom v. Herold* 383 US 107, 15 L Ed 620(1966): "Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made." Note also in *Baxstrom* the emphasis on Communication Skills. There seems to be a fetish about it throughout my troubles with the Courts and mental institutions doesn't there?

6. As to *Shopping Around Techniques employed in my case,* see *Mapp v. Ohio* 367 US 643, 5 L ed 1081, 81 S Ct 1684(1961)

6(a). The imputation of "dangerous to society and police officer" inadmissible evidence was introduced

by witness at hearing '74 that "the felony charge was being dropped." This witness was not my accusor i.e. not officer Johnson, who booked me charging me with assault on him, and the charge was not dropped beforehand.

6(b). *Mapp* sheds light on the withholding of the Test with Summary and Graph result, on Lawyer Edwards and the switch then to lawyer Martin at hearing time (Martin is now or last I heard the DA), Edwards transferred to New Orleans. The 42 USC 1985, 1986 business is clarified rack and screw treatment of myself; the pressure was on me at all times while I was in jail before the hearing to cause me to commit myself to a mental institution, which I refused to do, or to admit to some crime that I didn't commit at all. Jail was used to soften me up mentally and physically, to torture me and so force me to appear to be in dire circumstances, and to help get me committed, all in violation of 4th, 5th and 8th amendments.

6(c). *Mapp* also goes to the effect and nature of "bug" use of illegal electronic surveillance of which I have complained to this Court, to U.S. District Court - Midland, to 5th Circuit Court - New Orleans, to U.S. District Court - Houston (in libel and invasion of privacy action) many times and how it works to cause me mental distress, in violation of the 5th, 4th and 8th amendments, plus the 1st amendment. See *Time Inc. v. Hill* 385 US 374(1967). *Meyer v. U.S.* 386

F 2d 715, with Texas Penal Code Art 727a and TPC art 1389, 1393, 1394 make clear the function or purpose in "breaking" in burglary offence, 'force' element being entry at unusual place which 'bugging' is, and it involves, as in H-80-573, plagiarism, all of which according to *Mapp* is rack and screw techniques. It is worse and it figures prominently in the current multimillion dollar media scam abovementioned.

6(d). The mental distress continuum goes along with other features of my case which is the 'chronic' type of very convenient diagnosis that paranoid - schizophrenia is. You are never cured but on a lifetime treadmill subject to being hauled off to a nuthouse at any time for ECT or whatever, experiments, etc. and for this purpose the cause and use of mental distress by electronic 'bug' is meaningful and useful, and also a sordidly criminal tool of thievery. It is a provocation to violence and madness, thus in violation also of 1st amendment.

6(e). Another feature of the nature of lifelong so-called incurable sort, is the herpes denigrating virus, grafted onto me in connection with TRIMS episode - Houston, in 1972, by a woman working out of what must have been a 'dossier' on me, a file of some kind. TRIMS is Texas Research Inst. Mental . . . The being 'bugged' at 3606 Anetta Dr. at my residence there in Midland in 1970 was what prompted me to go to the Sheriff's office, and for so doing I was

hauled off to Big Spring. Later I learn from Agent Shrimp, FBI, that they had been watching me!? It is very possible, even probable, that the 'virus' being incurable was a means employed in the experimentation of *cancer,* resulting in aversion to women, and maybe cancer. It's not an unreasonable probability when you consider also that because of indifference amounting to malus animus, I could get no doctor to repair my right arm such that I now have 65-70% use of it. They wanted me committed; repairing my arm was too obvious and easy, and did not fit in with the plan. Here is a case of maiming and crippling, by omission. This was in Lamesa, Texas 55 miles north of Midland in '73-'74; thereafter in Midland they got the job done of committing me.

7. AS TO OVERRIDING ROYALTY INTEREST (ORRI): Defendant State of Texas, Amendments 5 and 14, Sufficiency of Complaint.

7(a). In *Lake Country Estates v. Tahoe Regional Planning Agency* 440 US 391(1970) "Petitioners alleged that respondents had thereby taken their property without due process of law and without just compensation in violation of 5th and 14th Amendments." This is essentially my claim for ORRI which 5th Circuit dismissed for failure to timely docket appeal in 1974 cause MO-74-CA-16 due once again to the disability of incompetency from ECT, compounded with my poverty then, and by malfeasance involving Federal court official. In *Lake,* 440 US at

398 n. 11 "then a complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff is entitled to no relief on any state of facts which could be proved in support of his claim"; neither then should my case be dismissed. Also in *Lake*: "there is no allegation in this complaint that any members of TRPA's governing board profited personally from the performance of any legislative act. App 8-12. If the respondents have enacted unconstitutional legislation, there is no reason why relief against TRPA itself should not adequately vindicate petitioners' interests." In my case this applies to Texas, or State of Texas per Railroad Commission and State Mental Hospital. As to TRPA, Marshall, J. points out the significant feature that ". . . no member of board is directly accountable to the public." This is especially true of State Hospital Doctors who have the power of the State *and* the medical profession behind them, and often times also Insurance Companies, it seems. The ORRI, worth $250,000.00 was lost mainly owing to disability, entanglements, deprivations in mental institutions, which were all wrongful. The discovery well was not even plugged although it was called a dry hole; the responsible authority for that is Texas Railroad Commission. See *O'Connor v. Donaldson.*

7(b). "The first 10 amendments are a check only on the activity of the Congress and are not limitations on purely private actions. Violation by federal statute of this amendment (1) and amendments 5, 9 and

10, require, as a condition precedent, that "governmental action be found, and that such condition is satisfied by showing that private parties have been aided in some way by government's thumb on scales." *Ass'n of Machinists v. Sandsberry,* Tx Civ App 1954, 277 SW 2d 176, affrmd, cert denied 77 S Ct 669. Such condition and showing in my case has been found and made, as from policy on high, politically both in H-80-573 and in this case, by denying me the Minn. Multi Per. Test to defend myself, and by use of mental institutions to make of me a political prisoner because of something I said in 1963. The libelers and invaders of my privacy have made untold tens of millions of dollars out of or off me, Meridian Oil Corp. and Cockrell Oil Corp. have benefited; the oil field involved over 40 wells, has made over $50,000,000.00. State-City-County Midland, Texas have benefited, especially if not held liable for damages. I was again exercising my right of speech and access to Court in Midland in 1970, 1974.

7(c). As to Political Prisoner Claim: "If state unconstitutionally proscribes free speech, it matters not what it chooses to call the wrong or whether it seeks to punish speaker directly in criminal action, indirectly by allowing a person allegedly aggrieved to recover damages or proceeds by injunctive process." *Noonan v. Rousselot* 1966, 48 Cal Rptr 817, 239 CA 2d 447.

8. To *1st Amend. violation at the same time affording 1st amend. protection* for liars and thieves, judicial censorship and the Transcript of June 20, 1978 in MO-77-CA-88:

8(a). "This amendment tolerates absolutely no prior restraints predicated on surmise that untoward consequences may result." *Bertot v. School Dist. No 1 Albany County, Wyo* CA Wyo 1975, 522 F 2d 1171. Nor is any judicial discretion allowed where 1st amendment right of *speech* and press, access to Courts, are issues. And "censorship in any form — Judicial Censorship included — is simply incompatible with the dictates of Constitution and concept of free press." *U.S. v. Dickenson* CA La 1972, 465 F 2d 496, on remand, 349 F Supp 227. Government's Court Reporter Stevens' hand was on the scale in Transcript of Hearing MO-77-CA-88 in June, 1978 Midland, toward a construction that I am somehow nuts and or incompetent so that I don't speak or think clearly. Some more of that speech business.

8(b). In *Jacobs v. U.S.* 290 US 13-15(1933) concerning 5th amendment 'taking' violation of my override, application of 42 USC 1985 and shopping around as already explicated; *Jacobs* 78 L ed 143 says "suits were based on right to recover just compensation for property taken by United States for public use in exercise of power of eminent domain. That right was guaranteed by the Constitution. The fact that condemnation proceedings were not insti-

tuted and that the right was asserted in suits by owners did not change the essential nature of the claim." Defendants initiated for me imprisonment and torture in nuthouses as the procedure in my case which lost me my claim for ORRI, with the help of the U.S. In the above case the 5th Amendment was self executing (no relation to 42 USC 1983 etc. required). This argument applies also to withholding from me the summary and graph results of Test, when I requested it from jail in Midland before the hearing.

8(c). In *Owen v. City of Independence, Mo et al,* supra (slip) at p 26: "But a municipality has no "discretion" to violate the Federal Constitution; its dictates are absolute and imperative." Neither do courts, in my case. At p 27-28, it says "How "uniquely amiss" it would be, therefore, if government itself —" the social organ to which all in our society look for promotion of liberty, justice, fair play and equal treatment, and the setting of worthy norms and goals for social conduct ". . . were permitted to disavow liability for the injury it has begotten."; At p 27 ". . . many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good-faith defense." Again, at p 27 Notes . . . "For example one must wonder whether this entire litigation would have been necessary had the "council members" thought that the city might be liable for their midsconduct.;" at p 29 ". . . that damages might be levied against the city (county, State)

may encourage those in policy making position to institute internal rules and programs designed to minimize the likelihood of "unintentional" (my quotes) infringements or preventing those "systemic" injuries that result not so much from the conduct of any single individual but from the interactive behavior of several governmental officials." I'll say! I firmly believe it is the only way you can reach some of these people. This bit of business is the most corrupt monster afoot; and if the mess now in Oklahoma means anything, so does the mess involving my case there in Texas, and the media scam on me.

9. *As to Policy Enhancing Stigma from Being Sent to Mental Institutions*

9(a). Here, see *In re Ballay* 482 F 2d 648(1973) and therein the chronicle of the various Committees respecting Judicial matters and the Mentally Ill: President's, Judiciary, Senate Hearings on them beginning in 1961. That case is graphic, and a definitive work making plain that no one need heap anything onto mental patients or former mental patients. There is, however, in a note, the indicator of a trend of vile policy which was visited onto me. The DC Code in a section makes Doctors immune from the patient-doctor privilege. The privilege as to information is the patient's, not ever the doctor's. The use made of such a policy in violation of law on me aside from the withholding of test was that no doctor, when I had contracted herpes virus, would

tell me anything about it. It took 9 to 10 months and as many doctors and all kinds of tests all over Texas before one doctor indicated it might be herpes simplex, nothing more. I was getting blood tests every time I got up enough nerve to go to a doctor or lab, from pure fear and mental torture, yet they refused to tell me anything, the apparent goal being to see how much such torture I could stand. In one case . . . "We would forget the teachings of the 8th Amendment if we allowed sickness (or *lack of* it) to be a crime . . . This age of enlightenment cannot tolerate such barbarous action." But it is not only tolerated, but sponsored by policy, and from Washington, D.C.

9(b). Defendants' Fail to Respond:

(1). Defendants have never addressed the issues of No Warrants at any time for all the false arrests and imprisonments; nor of course for the breaking and entry, burglary, plagiarism etc. involved in the media scam. I have done over 3 years in confinement, about 170 days of them in jail, yet I am not any kind of criminal. It fits in with 42 USC 1985, 1986. Why use warrants when you have muscle, and the goal is punishment and torture, and scam?! This was city-county Midland, Texas and statewide policy in Texas on me.

(2). None ever answered the raised issues of coercion, mind torture and control, or cruel and unusual punishment. They act like there is no 14th Amendment, or even a Constitution. This has become the

policy.

(3). None answered my charge that I was made a political prisoner in my own country for exercising my right of free speech legally. Now the 5th Circuit Court makes it an Order. Is that policy? The order isn't worth the paper it was stamped on.

10. Analysis of *Baxstrom v. Herold* compares to my case and goes to special knowledge issue and its use; is analogous to events of hearing in Midland 1974, to statutes and their misuse in a policy procedure surely beyond sec 1983, applies to U.S. Courts' current silly attempt to squelch. *Baxstrom v. Herold* 380 US 107 says at 624 (of 15 L Ed 620, 1966): "A person civilly committed to a mental institution pursuant to sec 384 of New York Correction Law (here substitute Texas VACS laws) upon termination of a penal sentence while confined in Dannemora State Hospital (County Jail - Midland, 1974) is denied equal protection of the laws (1) by the statutory procedure under which such a person, at the expiration of his penal sentence, may be civilly committed without the jury review of the prior determination of incompetency available to all other persons civilly committed in New York (or Texas), and (2) by his civil commitment to an institution maintained by Dept. of Corrections (sub lockward for "dangerous" patients at Big Spring State Hospital, TRIMS, and VA Hospital) beyond the expiration of his term (jail - Midland) without a judicial determination that he is dangerously mentally ill such as that afforded to all

so committed except those nearing the expiration of a penal sentence."

at 621: "A state, having made a substantial review proceeding by jury trial generally available in commitment proceedings on the issue of a person's sanity, may not, consistently with the equal protection clause of the Fourteenth Amendment, arbitrarily withhold it from some." They withheld it from me completely. In my case there was conspiratorial corruption of the due process clause of same 14th amendment.

at 621: "Under equal protection of laws, if a state has created functionally distinct mental institutions (sub. classifications - (1) mentally ill, (2) incompetent) classification of patients for involuntary commitment to one of such institutions may not be wholly arbitrary." i.e. in my case consideration solely of (1) mentally ill, and excluding consideration of (2) incompetent from ECT, a previous wrong they wish to cover up. As a note here, see smear of myself tagged by innuendo in Texas Monthly Mag Oct 1978 issue in H-80-573 evidence, as being inmate of Rusk State Hospital for Criminally Insane.

ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF THE WRIT

1. By 42 USC 1983, *Monell* and *Owen,* only a municipality is held liable for damage claims, which is not the complete case or remedy for me. Facts alleged

support liability of all the named defendants well beyond sec 1983 into 42 USC 1985 and 1986 and for Direct Tortious violation of my rights under Amends 1, 4, 5, 6, 7, 8 and 14 of U.S. Constitution. Thus, the State and County of Midland, Texas should remain defendants with City of Midland, Texas, also because of the unconstitutionality of Texas laws and all Defendants' unconstitutional application to me of those laws. For Jurisdiction and Review now, Article III, sec 2 of U.S. Constitution applies from the beginning.

2. The U.S. District and 5th Circuit Court dismissals are in conflict not only with other Circuit Court decisions on points of law and closely aligned facts in my case, but are also directly contrary to prevailing Supreme Court decisions.

3. The Court of Appeals for the 5th Circuit so far departed from procedure in my case, did so blatantly abuse its discretion, and in 1st Amendment area beyond the use of *any* discretion, by dismissing the cause and notifying me not to publish in that same order, that it is repugnant to the entire Bill of Rights, and especially to the 1st Amendment, in a cause in which the United States is already implicated.

4. Both lower courts have wrongly obviated the 7th amendment jury process and equal protection and due process clauses of the 14th amendment where my life and liberty and property all were critically involved, were lost or curtailed to my irreparable

damage; and, in so doing sanctify the State of Texas' wrongful, Unconstitutional laws and acts. *Deen v. Hickman 358 US 57.*

5. The case, if beyond jury, is incapable of adjudication on the tort damages and disputed facts. *Dimick v. Schiedt* 55 S Ct 296, 300; 293 US 474.

6. Per 28 USC 1651, the Supreme Court, in aid of its jurisdiction and to protect its appellate jurisdiction should issue the Writ of Certiorari to U.S. Court of Appeals for 5th Circuit, and to correct said lower courts' abuse of discretion. *Ex Parte Northern Pacific Ry* 50 S Ct 70, 280 US 142.

6(a). Both courts and Magistrate ignored or misplaced or left out entirely my Original Petition, which is a monstrous error.

7. My cause of action up to this point has wrongly been defeated by lower Courts' decisions, largely politically, and surely not legally authorized, therefore the Supreme Court should issue the Writ. *McClellan v. Carland* 217 US 280, 30 S Ct 501.

8. Up to now the cause has never really been considered "in" court, but has been effectively refused entry or appeal, therefore, the Supreme Court should issue the Writ so that it can be heard.

WHEREFORE, PREMISES CONSIDERED, I pray the Supreme Court will issue its Writ of Certiorari for consideration of this cause and then remand the case for consideration of the Facts and damages

therefrom before a jury, as is my right, and for relief in actual, compensatory and punitive damages in the sum of $41,000,000.00.

Respectfully Submitted,
Burley L. Morris
Burley L. Morris, pro se
6363 NW 63rd, #247
Oklahoma City, Oklahoma 73132

CERTIFICATION: I hereby certify that a true and correct copy of this Petition for Writ of Certiorari was mailed to Defendants' Counsel with sufficient 1st class postage prepaid on August 14, 1981.
Burley L. Morris

APPENDIX:

In The Supreme Court of United States

Burley L. Morris	)	
Petitioner - Appellant	)	
vs.	)	Cause No. MO-77-CA-88
State of Texas, City of	)	Appeal Cause
Midland, Texas and	)	No. CA5 81-1039.
County of Midland,	)	
Texas, Defendants	)	

Petitioner Morris, pursuant Rule 36, herewith Requests that, due to Exceptional Errors of Fact in Dispute, and completely ignored Original Petition in the abovenamed and numbered cause, as can be clarified only in the entire Record, the Supreme Court hear this Petition on the Entire Record, which I would have certified and sent up per 28 USC 1651(a) and Supreme Court Rule 32(2); But now here is a list of parts of Record as:

Appendix Items with following pertinent docket entries:

Item 1. Order dismissing MO-77-CA-88 by U.S. District Court - Midland, Tx of July 30, 1980.

Docket Entry: Appellant Morris' Notice of Appeal, Appeal to U.S. Court of Appeals for 5th Circuit of Jan. 17, 1981 with Appeal Brief following.

Item 2. Order dismissing MO-77-CA-88 on Appeal

or Cause No. 81-1039 by 5th Circuit Court of May 19, 1981.

Item 3. Magistrates' Report in MO-77-CA-88 of July 3, 1980

Docket Entry: Plaintiff Morris' Amended Complaint including Objection to wrong facts, with my clarifications, Objection to dismissal of any of Defendants and to coercive attempt to force me under 28 USC 1983 only.

Item 4. VA form Respecting Plaintiff-Petitioner Morris' *Test* Document from Albuquerque VA Hospital (Minnesota Multiphasic Personality — all phases of mental illness categories — which I passed!)

Item 5. Petitioner Morris' Corrections to Transcript of Hearing of June 20, 1978 in MO-77-CA-88 Midland-Odessa, U.S. Dist. Ct.

Item 6. Orders in H-80-573 Libel and Invasion of Privacy claim: *Morris v.* NBC, Transamerica Corp., United Artists, Channel 2 TV Houston, TV Guide and USA Veterans Administration, Justice Dept. in U.S. District Court for Southern Dist. of TX; Houston Division - COMPANION Cause.

Item 7. Letter of Magistrate, Ft. Worth, Tx. direct-

ing MO-77-CA-88 to U.S. Dist. Court Midland of Oct. 6, 1977 regarding Original Petition of mine of Sept. 23, 1977 for jurisdiction under U.S. Const. Art. III, sec 2, of U.S. Supreme Court.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

BURLEY L. MORRIS	)	
VS.	)	NO. MO-80-CA-88
STATE OF TEXAS, CITY AND COUNTY OF MIDLAND, TEXAS	)	

ORDER

On July 30, 1980, this Court ordered that the Plaintiff file an amended complaint clearly stating a factual basis supporting his cause of action as to the Defendants City and County of Midland, Texas. Plaintiff filed his Response To Court's Order on August 19, 1980.

Plaintiff's complaint still wholly fails to state a cause of action upon which relief can be granted. *Monell vs. Department of Social Services of the City of New York,* 98 S. Ct. 2018 (1978).

Accordingly, IT IS ORDERED that the Plaintiff's complaint is DISMISSED with prejudice as to

all remaining defendants.

SO ORDERED this 18th day of December, 1980.

/s/ LUICUS D. BUNTON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

No. 81-1039

BURLEY L. MORRIS,

Plaintiff-Appellant,

versus

STATE OF TEXAS, COUNTY OF MIDLAND, TEXAS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Texas

(MAY 19, 1981)

Before CHARLES CLARK, REAVLEY and WILLIAMS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellees' motion to dismiss the appeal is GRANTED.

Appellant, Burley L. Morris, brought a civil rights action under 42 U.S.C. § 1983 against the State of Texas and the City and County of Midland. His complaint grew out of alleged damages occasioned by involuntary commitment to mental institutions in 1970, and again in 1974. In the latter instance, his commitment was pursuant to a jury trial, and he was represented by an attorney. His pleadings complain not only of the commitments, but of the treatment administered in both instances while he was committed.

The State and the City and County moved to dismiss on the ground of immunity as governmental entities and on the ground that the limitations had run. The district court sustained the claim of immunity and dismissed the cause as to the State of Texas. *See Quern v. Jorden*, 99 S.Ct. 1139 (1979). This portion of the order of the district court of July 30, 1980, is not before the Court in this appeal. The cause was dismissed as to the City and County of Midland on the ground that appellant failed to file an amended complaint clearly stating the factual basis of a cause of action against the governmental entities.

By its order of July 30, 1980, the district court had directed appellant to file, not later than August 15, 1980, an amended complaint which would support his cause of action against the City and County of Midland. Appellant's response was not an amended complaint, but was a rambling narrative of all of his

personal difficulties which he asserts stem from the improper actions of the City and County of Midland and other governmental entities. The district court then, by order dated December 18, 1980, dismissed Morris' complain against the City and County of Midland, Texas, with prejudice.

The "response" was clearly not in compliance with Rule 8(e) (1) of the Federal Rules of Civil Procedure requiring that each averment of a pleading shall be simple, concise, and direct. What allegations there were were speculative or conclusory and did not state with any degree of clarity the specific claims of violations of § 1983. While it is now established under *Owen v. City of Independence, Missouri, 100 S.Ct. 1398 (1980),* that municipal corporations and governmental subdivisions can be held responsible for civil rights violations under § 1983 and cannot claim immunity, the district judge decided that "plaintiff's complaint still wholly fails to state a cause of action upon which relief can be granted," citing *Monell v. Dept. of Social Services of the City of New York,* 98 S.Ct. 2018 (1978).

Much of appellant's attack upon the actions of the City and County officials is grounded upon the 1970 instance of involuntary commitment. But no details are given upon which any basis for the specific complaint of wrongdoing on the part of the officials of the City or County can be based. The transcript of the hearing before the district court on the motion to dismiss reveals that much of the appel-

lant's attack actually is grounded upon the 1974 commitment which followed from a jury verdict in a trial in which he was represented by counsel. There was no appeal in that proceeding, and there are now no specific allegations of deprivation of constitutional rights in the proceeding.

Other allegations concerning mistreatment and false arrest in Hobbs, New Mexico, and Houston and Denton, Texas, and the United States Veterans Administration, are irrelevant to his claims against the City and County of Midland which were, by court direction, to be the subject of the amended complaint.

We find no abuse of discretion in the district court dismissing appellant's complaint with prejudice under 12(b) (6), Federal Rules of Civil Procedure.

It is not disputed that appellant's § 1983 suit was filed beyond the time limit prescribed in the appropriate statute of limitations. His assertion of justification for tolling the operation of the statute was not considered by the district court, nor is it necessary to consider it here in the light of the decision of the district court.

The City and County of Midland, Texas has moved to dismiss the appeal as frivolous and without merit under Local Rules of the United States Court of Appeals, Fifth Circuit, Rule 20. The Court grants that motion.

DISMISSED.

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS

BURLEY L. MORRIS	)	
VS.	)	NO. 77-088
STATE OF TEXAS, CITY	)	CIVIL RIGHTS
AND COUNTY OF	)	
MIDLAND, TEXAS	)	

MAGISTRATE'S REPORT, FINDINGS OF FACT AND RECOMMENDATION

TO THE HONORABLE JUDGE OF SAID COURT:

I.

This is a Civil Rights Action brought pursuant to 42 USC Section 1983 filed October 25, 1977. It is brought In Forma Pauperis pursuant to 28 USC Section 1915 and seeks a total of $41,000,000.00 in damages from the City and County of Midland and from the State of Texas for alleged false arrest and false imprisonment, malpractice due to shock treatments administered at Big Springs State Hospital, loss of property rights because of a loss of memory alleged to occur because of the shock treatments given to the Defendant all in violation of the 1st, 4th, 5th and 9th Amendments to the United States Constitution. The alleged false arrest and imprisonment appears to stem from two occasions, April of 1970 and September of 1974. The circumstances and details regarding the April 1970 instance are unclear from

the record. However, the incarceration of 1974 stems from a mental commitment hearing had on September 20, 1974 in the County Court of Midland County, Texas. The Defendant was adjudged mentally ill by a jury and was committed to Big Springs State Hospital by the HONORABLE JUDGE BARBARA CULVER where he remained for some 3 months. During that time period he underwent several shock treatments which he alleges damaged his mind and body, and caused a loss of memory which in turn caused a loss of property. The Petitioner disputes that he was ever mentally ill and seems to further raise an issue as to whether or not he had effective counsel at his mental competency and commitment hearing. Some 3 years and 1 month elapsed from the commitment hearing to the date of the filing of the complaint. A Motion to Dismiss has been filed by the State of Texas and the City and County of Midland in which those entities state that they cannot be properly sued under Section 1983 because they are not "persons" under the meaning of said Section and further that the Statute of Limitations bars the bringing of this cause of action because more than 2 years elapsed from the date of the cause of action to the date the complaint was actually filed. A court hearing was had regarding the Motion to Dismiss on June 20, 1978. The HONORABLE JUDGE ADRIANNE SPEARS, after said hearing, requested that all parties file briefs to the court regarding the Statute of Limita-

tions question and all of the briefs appeared to be filed by July 27, 1978.

II.

The Magistrate is of the opinion that the issue raised in the Motion to Dismiss regarding whether or not the entities sued can actually be sued as "persons" must be decided in favor of the Respondents. It has been held in the case of *QUERN V. JORDEN*, 47 USLW 4241(1979) that a State is not a person under Section 1983. The case of *MONELL V. DEPARTMENT OF SOCIAL SERVICES*, 436 US 658, 98 S.CT. 2018. 56 L.ED2d 611(1978) holds that although municipalities can be sued and are not wholly immune from suit under Section 1983, said municipalities are not liable unless the actions complained of are pursuant to official municipal policy of some nature which constituted a constitutional tort. The Court concludes that a municipality cannot be held liable solely because it employs a tortfeasor; that is, the Petitioner must show some course and scheme or municipal policy which violates the Petitioner's constitutional rights, privileges and immunities in order to sustain a cause of action under Section 1983. Because of the above cited cases, the Magistrate is of the opinion that the State's Motion to Dismiss be immediately granted. In regard to the County and City of Midland, an Order should issue to the Petitioner to show cause why his suit should not be dismissed as to the County and City of Midland

unless the Petitioner amends his petition to show a specific tortfeasor, specific acts on the part of the tortfeasor constituting constitutional torts and that those acts are a part of a policy or scheme of the municipality or the County Government. The Magistrate further finds that the allegations as to overriding royalty interests lost and other interests in oilwell properties lost, as alleged by Petitioner in his pleadings of December 29, 1977 should be immediately dismissed under Rule 12(b) (6) of the Federal Rules of Civil Procedure because they fail to state a cause of action pertaining to Section 1983 or, in the alternative, said complaints are frivolous under Section 1983.

Pertaining to the issue of the Statute of Limitations and whether or not said Statute was tolled by the Petitioner's state of mind during the 3 year period in which he failed to file his complaint, your Magistrate is of the opinion that that point does not need to be reached at this time unless the Petitioner can amend his petition as set forth above to bring this action properly under Section 1983. If the Petitioner cannot so amend his petition, then the cause of action as to the County and City of Midland should be dismissed. The Magistrate would further point out to the Court that there is no medical evidence whatsoever showing that the Petitioner actually received shock treatments, their effect, if any, on the Petitioner, nor is there any evidence whatsoever that the Petitioner actually had a loss of

memory from and after September 9, 1974 to the date of the filing of his complaint in October, 1977.

Respectfully submitted,

/s/ J. MICHAEL CUNNINGHAM
United States Magistrate
Midland-Odessa Division
Western District of Texas

Appendix Item 4
Pet. for Writ Certiorari
(Exhibit 9 in H-80-573 (Collyer Copy)

Rec'd 1:00 4:30pm May 22, 1980 BFM

VETERANS ADMINISTRATION
REGIONAL OFFICE
2515 MURWORTH DRIVE
HOUSTON, TEXAS 77054

MAY 2 2 1980

IN REPLY REFER TO: 362/2320

Mr. B. L. Morris
2622 Nasa Road 1
Seabrook, Texas 77586

Dear Sirs: Document requested is the Minnesota Multiphasic(Type) Personality Evaluation Test (several hundred questions & answers) with graphed results given me and discussed with me by Dr. Rich in Albuquerque VA Hospital in 1968-69.

Dear Mr. Morris:

Test document is Evidence requested in H-79-811 & H-80-573.

We wish to act promptly on your recent correspondence, but because of insufficient or inaccurate information we cannot identify the proper record. We will be glad to make a further search if you can supply additional identifying data. The information requested below will help us. Please complete as many of the items as possible and return this letter to us with your original correspondence (if enclosed).

The information is solicited under authority of Title 38, United States Code. Disclosure is voluntary; however, if it is not furnished, we will be unable to take further action on your correspondence. Failure to furnish this information will have no other adverse effect.

Sincerely yours,

James E. Evans

JAMES E. EVANS
Chief, Administrative Division

Requested by letter from me in 1974 from Midland County Jail (not sent). Again in H-79-811 and now in H-80-573.

Pursuant FRCP Rule 45(b)Subpoena
Pursuant 5 USC 552,552a

Lawsuits: H-80-573 " H-79-811		
Morris, Burley Lorayne		457-32-5681
5401 3948 (was US)	Oct 10, 1951	Sept 23, 1953
Dec 19, 1928		

Burley L. Morris (pro se)

FL 07-2
Dec 1975(R)

ORIGINAL CORRESPONDENCE ATTACHED
PLEASE RETURN WITH THIS LETTER

"To care for him who shall have borne the battle, and for his widow, and his orphan" ABRAHAM LINCOLN

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

BURLEY L. MORRIS,	)	
PLAINTIFF	)	
VS.	)	
STATE OF TEXAS,	)	CASE NO. MO-77-CA-88
COUNTY AND CITY	)	(referred from
OF MIDLAND, TEXAS,	)	MAGISTRATE'S CASE
DEFENDANTS	)	NO. CA 4-296, Ft. Worth)

I

PLAINTIFFS CORRECTIONS TO TRANSCRIPT ON HEARING OF MOTION TO DISMISS 6-20-78, MIDLAND ITEMIZED MISQUOTES OF TESTIMONY AND ARGUMENT OF PLAINTIFF, MISREPRESENTATIONS, MISCONSTRUCTIONS AS FROM THE TRANSCRIPT:

1. p 13 . . . Mr. Morris: 'Inasmuch as I (am supposed to have) failed (according to D's argument) to perfect an appeal, I think the (absence of) a transcript (or indeed, record itself) makes it pretty difficult . . . etc.'

2. p 16 . . . 'they didn't have access to that same evidence that I did*n't* (did *not*) have access to: (I had the right to have the evidence, had legally the right to access, but was not able to have the evidence —specifically of the Minnesota Multiphasic Person-

ality Test of Albuquerque, VA), including (the evidence of the fact of having the Herpes infection at the time of the hearing) which had been actually diagnosed . . . There was evidence . . .'

3. p 17 . . . Mr. Morris: 'in the area of sexual deviation (,) from the notes I made (at the time of the hearing . . , those notes of my own.)

4. p 17 . . . Mr. Morris: '. . . decide I didn't need (*it*), (i.e. treatment of any kind relating to mental treatment etc. . .) I was extremely fearful . .'

4. p 18 . . . Mr. Morris: 'He brought a man to meet me . . . a *Mr. Reichle* (I think is more correctly the name I recall, and said, not Riker).

5. p 19 . . . '. . . And for a given time I was able to get rid of that infection . . .' is thoroughly incorrect. The statement made was 'Well, first I had to get rid of that infection. (It was quite a while before I was able to get rid of it . . . about 3 years . . . from June 1972 . . . , referring to the herpes.)

6. p 20 . . . The Court . . . 'You will have an opportunity to be heard . . . (Court said 'I understand your objection) . . . I assumed relating to the personal injury tack D was arguing.

7. p 26 . . . Mr. Morris: '. . . Every time I have attempted to defend myself and my rights at law (going to the proper authorities including law enforcement people), I have had all manner of problems with the *authorities* (including police . . . not

spoken). Not 'lacking in pleadings pled' . . . Entirely wrong and false . . . Nothing of that kind of thing did I say.

8. p 27 . . . '. . . If I get punished every time I try to get a solution legally to this thing, well, forgive me, but I am not only at myself enough to try to take up the slack (*now*), but it is almost like attempting suicide to try to simply have my rights at law. (Any construction, which appears to be the goal of said above error, that I attempt suicide, which I never have, or in any way as prone to it is false.) This is clarified by what was said before; then . . .' I recognize it is dangerous to try to have my rights at law, but surely I am entitled to have them.'

9. p 28 . . . Mr. Morris: 'Thank you sir, I can do lots better, I am just getting started' not 'warmed up.'

II

SUMMARY OF GIST OF ERRORS, AND EMERGENT APPARENT ABSENCE OF RECORD (AND TRANSCRIPT OF HEARING OF 1974)

PLAINTIFF RESPECTFULLY SUBMITS TO THE COURT, MAY IT PLEASE THE COURT, there is an emergent apparent intention from all of which mistaken representations relating things said by me in this wise: that I have some kind of inability to speak clearly, or to think clearly which bolsters the D's position. This is prejudicial espe-

cially since the (one of them - especially as re: Albuquerque VA Dr. Taylor's remark . . . 'You have a speech defect.') Hearing of '74 is under Direct Attack and now apparently reversible. Also, I don't have any such problem of speaking or thinking unclearly, although the construction from said transcript here is that I might seem to have.

Perhaps the Court Reporter, Mr. Stevens, was bored, or sleepy (he was yawning just prior to resumption of the hearing when the Deputy Clerk Midland County had come), or was simply trying to elicit a response from myself. (See briefs and letters, affidavits in case files.) Such behavior I have experienced from those trying to provoke me. Now the evidence in the transcript made from his notes. I beg the Court to make the appropriate corrections, and note the reasoning above with respect to same. Also the matter of record (County Court at Law is a Court of Record) apparently no such record or transcript of it, a copy etc. exists at present . . . It should, I believe was at the time recorded. i.e. the testimony etc. of the '74 hearing in question. If not, why not? If no such record existed, then how could I have perfected an appeal?; prevented once again before I start. I beg the Court to consider the gist of this and other losses, falsifications of records, misrepresentations of dates, etc. . . mistakes, etc., all of which errors coincidentally together make up a burden I will not lawfully be made to bear. These things cannot continue to be excused. Not only are they prejudicial, but there

is the apparent intent of malus animus to go with it. All of which again denies me due process in violation of Amend XDV etc.

Respectfully submitted:

/s/ Burley L. Morris
637 Bay Club
Seabrook, Texas 77586

CERTIFICATION: I hereby certify that a true and correct copy of this answer of corrections is being mailed this day (also previously not registered on July 10, 1978) July 17, 1978 to Defendants Texas, City and County Midland, Texas, Magistrate Hudspeth and Justice Dept., Washington D.C.

Appendix Item #6
Pet. for Writ Certiorari – S.Ct.

Rec'd Aug 3, 1979 BBM

No. 79-CA-88
& CA5 79-1039

V. BAILEY THOMAS
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

Aug 2, 1979
date

P.O. Box 61010
Houston, Texas 77208

TO ALL COUNSEL OF RECORD

Re: Civil Action No. H-79-811
BURLEY L. MORRIS v NATIONAL BROADCASTING CORP ET AL

COURT OF JUDGE NORMAN W. BLACK

PLEASE TAKE NOTICE that pltf's Motion for New Trial

has been placed on this Court's Motion Docket for Aug 27, 1979.

ALL RESPONSES to said pleading ARE DUE ON OR BEFORE this date. Motions will be considered by the Court on the written documents presented by counsel WITHOUT the necessity of a personal appearance. Copies of the Court's decision will be forwarded to all counsel of record.

REQUEST FOR ORAL PRESENTATION of motions will be considered by the Court on or after the submission date stated above. However, unless notified by the Clerk, counsel will presume that no oral hearing is permitted.

V. BAILEY THOMAS, CLERK

By: Frankie Cross
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BURLEY L. MORRIS	)	
VS.	)	Civil Action
NATIONAL BROAD-	)	No. H-79-811
CASTING CORP., et al.	)	

ORDER

Appearances: None

Counsel	Representing
Motion(s):	Conference _____
Plaintiff's Motion for	Hearing _____
New Trial	Neither X

On July 24, 1979, the Court dismissed this case for lack of subject matter jurisdiction. Plaintiff thereafter filed a Motion for New Trial pursuant to Rule 59, F.R.Civ.P. Since this case has not been tried, such a motion is inappropriate. Considered as a Motion for Relief from Judgment or Order pursuant to rule 60, F.R.Civ.P., said Motion is Denied.

Date Order Entered: 10-29-79.

/s/ NORMAN W. BLACK
UNITED STATES DISTRICT JUDGE

									NEAREST $1,000	H-80-573	
541	4	80	573	3	12	80	2	895	1	9,999	4119	GABRIELLE K. MCDONALD

PLAINTIFFS

L BURLEY L. MORRIS

DISMISSED
6-20-80

DEFENDANTS

1. UNITED STATES JUSTICE DEPT.,
2. VETERANS ADMINISTRATION,
3. TRANSAMERICA CORP. (UNITED ARTISTS),
4. N.B.C.,
5. CHANNEL 2 T.V. and
6. T.V. GUIDE

CAUSE

Freedom of Information Act
5 U.S.C. §552 & 552a
$10,000,000.00

ATTORNEYS

PRO SE:
Burley L. Morris
2622 Nasa Road 1
Seabrook, Texas 77586

Defts #3,#4,#5 & #6

R. James George, Jr.
GRAVES, DOUGHERTY, HEARON & MOODY
2300 Austin National Bank Tower
P. O. Box 98
Austin, Tx 78767
512 478-6421

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	3-12-80	$60.00 #27587		JS-6 MGC	
				JS-8	

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev

GABRIELLE K. MCDONALD H-80-5

DATE	NR.	PROCEEDINGS
3-12-80	1	ORIGINAL COMPLAINT, w/Jury Demand, filed.
3-12-80		Summons issued (6) to deft.
3-28-80	2	RETURN Of Summons for deft Channel 2 TV, served on 3-26-80,filed
4-10-80		RETURN of summons on following defts, filed: da
	3	Dept. of Justice, served by certified mail #301,867 on 3-
	4	Veterans' Administration, served by certified mail #301,8 on 3-25-80. DD 4-14-
4-16-80	5	Defts Transamerica Corp, United Artists, National Broadcasting a Channel Two Television Company, MOTION TO DISMISS, filed. M/D 5-12-80 by clerk
4-21-80	6	Deft Triangle Publications, Inc., publisher of TV Guide MOTION DISMISS, filed. ad M/D 5-12-80 by clerk
4-30-80		RETURN Of SUMMONS for the following defts, filed. ad
	7	United Artists served on 4-14-80
	8	Transamerica Corp served on 4-2-80
	9	N.B.C., served on 4-14-80
	10	TV Guide, served on 4-9-80
4-30-80	11	Plft MOTION To AMEND ORIGINAL PETITION,filed. ad M/D 5-12-80 by clerk sv/ad
4-30-80	12	Pltf RESPONSE To DEFTS ANSWER and Supporting Pltf Motions of Jo And to Amend Pleadings, filed. ad
5- 2-80	13	Pltf Exhibit No. 5, filed. ad
5- 6-80	14	Pltf Exhibit No. 6, filed. ad
5-12-80	15	Pltf Exhibit No. 7(a) and (b), filed. ad
5-16-80	16	Pltf MOTION To SUBMIT EVIDENCE w/ORAL PRESENTATION, FRCP RULE filed. ad
6- 2-80	17	Pltf Exhibit No. 7, filed. ad
6- 6-80		Summons issued (1) to Attorney General, U. S. ad
6-10-80	18	Pltf Exhibit No. 106, filed. ad
6-11-80	19	Pltf Exhibit No. 11, filed. ad
6-13-80	20	Pltf EXHIBIT No. 10, filed. ad
6-20-80	21	(GKMc) ORDER, filed. Parties ntfd. ad. 1.Pltf Motion to Amend Original Petition is GRANTED. 2.Motions to Dismiss of Defts Transamerica Corp, N.B.C., Channel 2 T.V., and T. V. Guide are GRANTED.

CIVIL DOCKET CONTINUATION SHEET — GABRIELLE K. McDONALD

PLAINTIFF	DEFENDANT	DOCKET NO H-80-573
UBRLEY L. MORRIS	UNITED STATES JUSTICE DEPT.	PAGE 2 OF ___ PAGES

DATE	NR.	PROCEEDINGS
6-20-80	22	(GKMc) FINAL JUDGMENT, filed. Parties ntfd. ad. DISMISSED as to defts Transamerica Corporation, N. B. C., Channel 2 T. V., and T. V. Guide.
6-30-80	23	Pltf MOTION For NEW TRIAL, filed. M/D 7-14-80 by clerk sv/ad
6-30-80	24	Pltf BRIEF Supporting MOTION For NEW TRIAL, filed. ad
6-30-80	25	Pltf EXHIBIT No. 12, filed. ad
6-30-80	26	Pltf EXHIBIT No. 13, filed. ad

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BURLEY L. MORRIS,	)	
Plaintiff,	)	
V.	)	
UNITED STATES JUSTICE DEPARTMENT, VETERANS ADMINISTRATION, TRANSAMERICA CORP. (UNITED ARTISTS), N.B.C., CHANNFL 2 T.V. and T.V. GUIDE,	)	CIVIL ACTION NO. H-80-573
Defendants.	)	

ORDER

On this day, came on to be heard the plaintiff's Motion to Amend Original Petition and the Motions to Dismiss of defendants Transamerica Corporation, N.B.C., Channel 2 T.V., and T.V. Guide. The plaintiff's Motion to Amend Original Petition, being unopposed, is GRANTED. Both the Amended Original Petition and the Original Complaint, as the private defendants point out, involve claims at least partially litigated in *Burley L. Morris v. National Broadcasting Corporation, et al,* No. H-79-811,

which was dismissed for lack of subject matter jurisdiction by Order of Judge Black on July 24, 1979. The claims previously presented in that case are dismissed here on the basis of res judicata. The claims not previously presented in that case are no more appropriately brought against the private defendants here than they were there. They are, as against the private defendants, dismissed for lack of subject matter jurisdiction for the reasons stated in Judge Black's Order.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that the plaintiff's Motion to Amend Original Petition be, and the same is, GRANTED, and that the Motions to Dismiss of defendants Transamerica Corporation, N.B.C., Channel 2 T.V., and T.V. Guide, be, and the same are, GRANTED.

DONE at Houston, Texas, this 20th day of June, 1980.

/s/ GABRIELLE K. MacDONALD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BURLEY L. MORRIS, Plaintiff,	)	
V.	)	
UNITED STATES JUSTICE DEPARTMENT, VETERANS ADMINISTRATION, TRANSAMERICA CORP. (UNITED ARTISTS), N.B.C., CHANNEL 2 T.V. and T.V. GUIDE, Defendants.	)	CIVIL ACTION NO. H-80-573

FINAL JUDGMENT

For the reasons set forth in the Court's Order entered this date, the above-styled cause is hereby dismissed as to defendants Transamerica Corporation, N.B.C., Channel 2 T.V., and T.V. Guide.

This is a FINAL JUDGMENT.

DONE at Houston, Texas, this _____ day of _____, 1980.

/s/ GABRIELLE K. MacDONALD
UNITED STATES DISTRICT JUDGE

Rec'd July 3, 1980

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

JESSE E. CLARK
CLERK

P.O. Box 61010
Houston, Texas 77208

June 30, 1980
date

Re: Civil Action H-80-573

BURLEY L. MORRIS v. UNITED STATES JUSTICE DEPT.

JUDGE GABRIELLE K. McDONALD

PLEASE BE ADVISED that Pltf MOTION For NEW TRIAL

has been placed on this Court's Written Motion Docket for July 14, 1980.

ALL RESPONSES to said pleading ARE DUE ON OR BEFORE this date. Motions will be considered by the Court on the written documents presented by counsel WITHOUT the necessity of a personal appearance by counsel. Copies of the Court's decision will be forwarded to all counsel of record.

REQUEST FOR ORAL PRESENTATION of motions will be considered by the Court on or after the submission date stated above. However, unless notified by the Clerk, counsel will presume that no oral hearing is permitted.

Very truly yours,

JESSE E. CLARK, CLERK

By: A. Daniel deputy

cc: All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BURLEY L. MORRIS,	)	
Plaintiff,	)	
vs.	)	
UNITED STATES JUSTICE DEPARTMENT, VETERANS ADMINISTRATION, ET AL.,	)	CIVIL ACTION NO. H-80-573
Defendants.	)	

ORDER

CAME ON to be considered this date the application of the Federal defendants herein, the United States Department of Justice and the Veterans Administration, for an Order extending the time for filing an answer or to otherwise move and the Court being of the opinion that good grounds exist for said extension, it is therefore

ORDERED that the Federal defendants be granted an additional thirty (30) days within which to answer or otherwise move.

DONE at Houston, Texas, on this the 1st day of August, 1980.

/s/ GABRIELLE K. MacDONALD
UNITED STATES DISTRICT JUDGE

Appendix Item 7
Pet. for Writ Authorities
110-77-CA-88
CA5 81-1039

A Judge
UNITED STATES MAGISTRATE
UNITED STATES DISTRICT COURT
520 U. S. Courthouse
Fort Worth, Texas 76102
October 6, 1977

Of 34 No Mich
TO 334 2071

Mr. Burley L. Morris
General Delivery
Room 132, LaQuinta Motel
Denton, Texas 76201

Dear Mr. Morris:

The United States District Clerk's Office in Dallas, Texas, received on September 19, 1977, your four-page typewritten complaint styled Burley L. Morris v. State of Texas and City County-Midland, Texas. Apparently, the Clerk's office in Dallas forwarded you a one-page Application to Proceed Without Prepayment of Costs and Affidavit in Support Thereof together with U. S. Marshal's Service forms 285 which you completed and returned to that office.

On October 6, 1977, the entire packet of your material was received by the U. S. Magistrate's office, Fort Worth, Texas, having been forwarded by the U. S. Magistrate's office, Dallas, Texas.

Your attention is invited to Section 1391 of Title 28, United States Code which deals with venue in civil actions; a photocopy of this Section is enclosed. In particular, your attention is invited to Subparagraph (e) which states:

> A civil action in which each defendant is an officer or employee of the United States or an agency thereof in his official capacity or under color of legal authority, or an agency of the United States, may except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides of no real property is involved in the action.

It appears that you are seeking to sue:

1. the City of Midland, Texas;
2. the County of Midland, Texas; and,
3. the State of Texas.

The City and County of Midland, Texas, are both located in the Western District of Texas and the Attorney General and the Capitol of the State of Texas are located in Austin, Texas, which is also in the Western District of Texas. Should you be seeking to proceed under subparagraph (e)(2): "...brought in any judicial district in which: ...(2) the cause of action arose, ..." it would appear that you are asserting a cause of action a portion of which would have arisen in Midland County, Texas, in the Western District of Texas, a portion of your claim having arisen at the Big Spring State Hospital which is in the Northern District of Texas, and a portion having arisen at the "TRIMS" which maybe in Houston, Texas, in the Southern District of Texas.

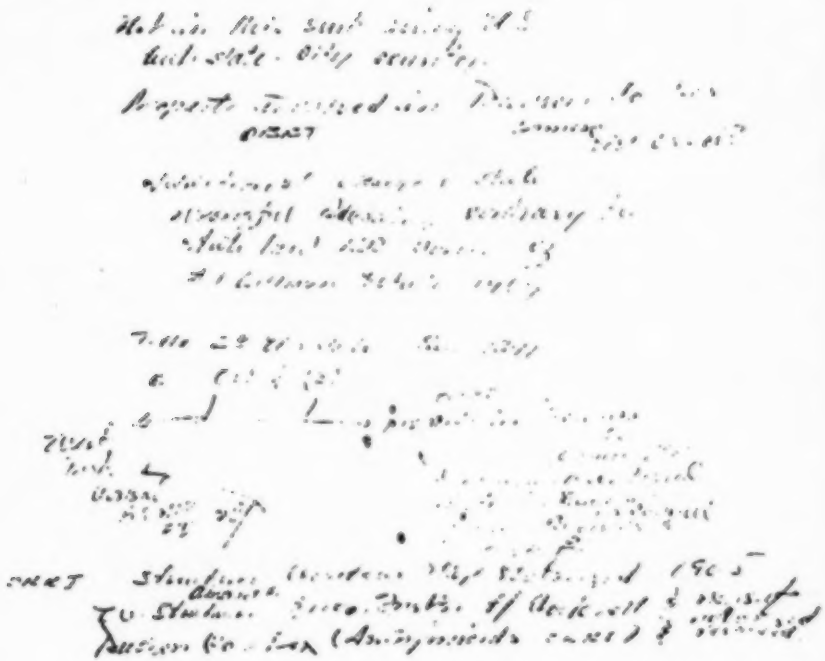
Your complaint is therefore being returned to you in order that you may consider under Section 1391 whether appropriate venue in this action would lay in the Western District of Texas, the Southern District of Texas or in the Northern District of Texas.

Very truly yours,

Alex H. McGlinchey
United States Magistrate

AHM:kp

Enclosure



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Opposition

Office-Supreme Court, U.S.
FILED
SEP 25 1981
ALEXANDER L. STEVAS,
CLERK

NO. 81-387

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

BURLEY L. MORRIS,

Petitioner,

VS.

CITY OF MIDLAND, TEXAS,
COUNTY OF MIDLAND, TEXAS,
AND STATE OF TEXAS,

Respondent.

Petition for Writ of Certiorari
to the Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

Office of the City Attorney
Post Office Box 1152
Midland, Texas 79702

J. Brian Martin,
First Assistant
City Attorney

SEPTEMBER 24, 1981

NO. 81-387

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BURLEY L. MORRIS,

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VS.

CITY OF MIDLAND, TEXAS,
COUNTY OF MIDLAND, TEXAS,
AND STATE OF TEXAS,

Respondent.

QUESTIONS PRESENTED

1. Did the Petitioner ever file a complaint which stated a cause of action?

2. Was the Texas Statute of Limitations for personal injury tolled by the Petitioner's mental state?

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Petition for Writ of Certiorari
to the Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION
TO THE PETITION FOR CERTIORARI

TO THE UNITED STATES SUPREME COURT:

Respondent, CITY OF MIDLAND, TEXAS, defendant-appellee in cause 81-1039 before the Court of Appeals for the Fifth Circuit respect-

fully submits this brief in opposition to the petition for certiorari. For clarity, Morris will be referred to as the "Petitioner" and the City of Midland will be referred to as the "City".

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is included in the record but is not reported.

JURISDICTION

The court of appeals entered its opinion on May 19, 1981. The petition for writ of certiorari was filed August, 1981.

STATUTORY PROVISIONS INVOLVED

Art. 5526 V.A.T.C.S. provides in pertinent part: "There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description: .... 4. Action for injury done to the person of another....."

Art. 5535 V.A.T.C.S. provides in pertinent part:

> "If a person entitled to bring any action mentioned in this subdivision of this title be at the time the cause of action accrues....a person of unsound mind, the time of such disability shall not be deemed a portion of the time limited for the commencement of the action and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title."

Art. 5547-83 V.A.T.C.S. provides in pertinent part:

> (a) The judicial determination under this Code that a person is mentally incompetent creates a presumption that the person continues to be mentally incompetent until he is discharged from the mental hospital or until his mental competency is re-determined by a court.
>
> (b) The judicial determination that a person is mentally ill or the admission or commitment of a person to a mental hospital, without a finding that he is mentally imcompetent does not constitute a determination or adjudication of the mental competency of the person and does not abridge his rights as a citizen or affect his property rights or legal capacity.

Art. 5561h V.A.T.C.S. provides in pertinent part:

> Sec. 2 (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.
>
> (b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b) (5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf, shall not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

Sec. 4 (a) Exceptions to the privilege in court proceedings exist:
(1) when the proceedings are brought by the patient/client against a professional, including but not limited to malpractice proceedings, and in any criminal or license revocation proceedings in which the patient/client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;
(2) when the patient/client waives his right in writing to the privilege of confidentiality of any information, or when other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf submit a written waiver to the confidentiality privilege;
(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient/client; or
(4) when the judge finds that the patient/client after having been previously informed that communications would not be privileged, has made communications

to a professional in the course of a court-ordered examination relating to the patient's/client's mental or emotional condition or disorder providing that such communications shall not be privileged only with respect to issues involving the patient's/client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:
(1) to governmental agencies where such disclosures are required or authorized by law;
(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client.
(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation or otherwise disclose identities in any manner;
(4) to any person bearing the written consent of the patient/client or a parent if the patient/client is a minor or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or overnmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act; or
(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client.

Rule 8(e)(1) Federal Rules of Civil Procedure provides: "each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required." Federal Rule 12(b) provides in pertinent part:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: .....(6) failure to state a claim upon which relief can be granted .....If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

STATEMENT OF THE CASE

Proceedings and Results

This is a personal injury case. On September 19, 1977, the United States District Clerk's Office in Dallas, Texas, received a four page typewritten complaint styled Burley L. Morris v. State of Texas and City-County, Midland, Texas. This complaint alleged that the Petitioner had been falsely arrested by a Sheriff's Deputy in Midland, Texas, in April, 1970. He also alleged that he had been falsely imprisoned in Big Spring State Hospital in both 1970 and 1974. This complaint was forwarded to the U. S. Magistrate's Office in Fort Worth, Texas. The Magistrate recommended that venue should lie in the Midland-Odessa Division of the Western District of Texas. Consequently, the United States District Court for the Northern District of Texas, Fort Worth Division, transferred this action to the Midland Division of the Western District of Texas. The City answered the Petitioner's complaint by

alleging that it was too vague, and was barred by limitations.

On July 30, 1980, the United States District Court for the Western District of Texas, Midland-Odessa Division ordered that this cause should be dismissed as to the State of Texas and that the Petitioner should file an amended complaint clearly stating a factual basis supporting his cause of action. The Petitioner never did this. Instead, the Petitioner's response to the Court's Order consisted of a complaint about the dismissal of the State of Texas.

On December 18, 1980, the United States District Court for the Western District of Texas, Midland-Odessa Division, ordered the Petitioner's complaint dismissed because it wholly failed to state a cause of action.

On January 17, 1981, Petitioner mailed a notice of appeal to the United States Court of Appeals for the Fifth Circuit. This appeal claimed that the Petitioner's complaint was dismissed because the District Court wanted

to "cover it all up."

On May 19, 1981, the United States Court of Appeals for the Fifth Circuit issued its opinion. This opinion pointed out that Petitioner's response to the District Court's order to file an amended complaint was "a rambling narrative of all of his personal difficulties....." The opinion also stated that Petitioner's "response was clearly not in compliance with Rule 8(e)(1) of the Federal Rules of Civil Procedure..." Consequently, the Court of Appeals found that there was "no abuse of discretion in the district court dismissing (Petitioner's) complaint with prejudice...."

Fact Statement

Under Art. 5561h none of the records of Big Spring State Hospital are available to the City. When this is coupled with the sparse and confusing facts in the Petition for Writ of Certiorari the City feels that a fact statement at this point would be too incomplete to be of value. However, the facts will be discussed in the arguments section.

SUMMARY OF ARGUMENTS

The Court of Appeals correctly held that Petitioner's failure to file an amended complaint which supported his cause of action was grounds for the District Court to dismiss the case.

Every document which this Petitioner has filed with the District, Circuit and Supreme Court has been characterized by vague issues, overgeneralized statements and aimless complaints. Petitioner's complaint was too vague to adequately notify the City of any claim, nor did it allege under what federal law it was initiated. This inability of the

Petitioner to state a succinct and logical complaint is why the District Court dismissed the complaint and the Circuit Court dismissed the appeal. The City contends that this rambling nature is also why this Court should dismiss the Petition for Writ of Certiorari.

The City would also present as an alternate ground for dismissal, the Texas statute of limitations for personal injury suits. This statute basically states that a suit for personal injury has to be commenced within two years after the cause of action accrues. As one can see from the face of the pleadings, the case at bar was commenced more than two years after the cause of action accrued.

ARGUMENTS

I. THE LOWER COURTS DID NOT ERR IN DISMISSING THE PETITIONER'S COMPLAINT WITH PREJUDICE BECAUSE OF PETITIONER'S FAILURE TO STATE A CAUSE OF ACTION.

The initial question presented by this case is whether Rules 8(e)(1) and 12(b)(6) of the Federal Rules of Civil Procedure are alive and well. The Petitioner has failed to clearly state a factual basis for his cause of action. Some examples from the Petition for Writ of Certiorari are illustrative. There have been violations of the "Constitution at every step in the series of events...." (Petition, p.7). I have suffered "the most munificent criminal-civil plagiaristic and libellous smear and scam of myself, invasion of my privacy, that you or I have ever heard of...." (Petition, p.9). "(D)ating from 1970 events, everything was solely in the hands of administrative officials and State of Texas, County of Midland, Texas, and City of Midland, Texas police policy makers." (Petition, p.7)

There is nothing wrong with generalized

statements in a legal document. But the Petitioner never fills in the details to his generalized statements. For example, the Petitioner has repeatedly stated that he was falsely arrested, but he has never said how he was falsely arrested. Was his arrest with or without probable cause? We simply don't know because the Petitioner has never said.

II. THE PETITIONER'S COMPLAINT WAS FILED AFTER THE STATUTE OF LIMITATIONS HAD RUN AND THE STATUTE OF LIMITATIONS HAD NOT BEEN TOLLED.

The Petitioner's complaint was filed in the United States District Court in Dallas, Texas, on September 19, 1977. On September 20, 1974 the Midland County Probate Court entered a judgment on a jury verdict that the Petitioner was mentally ill, and that he required observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others. Therefore, the complaint shows on its face that it was made after the Texas two year statute of limitations for personal injury. And under Gordon v. Garrison, 72 F. Supp. 477

D.C. Ill. 1948, federal courts follow state statute of limitations. (Art. 5526 TEX. CIV. STAT. ANN.). However, the Texas statute for tolling limitations provides that if a person is of "unsound mind" at the time the cause of action accrues, then the statute of limitations shall be tolled until the removal of the disability. (Art. 5535 TEX. CIV. STAT. ANN). Therefore the question becomes was Petitioner of "unsound mind" so as to toll the statute of limitations, and when did the statute of limitations begin to run?

A. The Petitioner was not mentally disabled to the extent that required the tolling of the statute of limitations.

The landmark case in Texas on the tolling of the statute of limitations because of "unsound mind" is Swink v. City of Dallas, 36 S.W.2d 222. (TEX. COMM. APP., 1931, holding approved). This case gives the Texas position that the legal disability to toll the running of the statute of limitations must be "of such a nature as to show him unable to manage his business affairs or estate, or to com-

prehend his legal rights or liabilities" 9 ALR 961, at 965. The Petitioner was obviously able to comprehend his legal rights for he said in his petition for writ of certiorari that he has tried every year since 1967 to get a lawyer to sue for a supposedly lost royalty interest in an oil lease. (Petition, p.28).

Texas law specifically provides that "(t)he judicial determination that a person is mentally ill or the admission or commitment of a person to a mental hospital without a finding that he is mentally incompetent does not constitute a determination.... of the mental competency of the person and does not abridge his rights as a citizen... or legal capacity." (Art. 5547-83 (b) TEX. CIV. STAT. ANN.). In the case at bar Petitioner was found to be mentally ill. This did not affect his legal capacity, nor did it create a presumption of mental incompetency. Missouri Pacific Railroad v. Cunningham, 515 S.W.2d 678 (TEX. CIV. APP. 1974). The Texas Probate Code uses the term incompetent and

person of unsound mind interchangeably. Therefore, finding the Petitioner mentally ill did not mean that he was of unsound mind and did not toll the statute of limitations.

B. The statute of limitations began to run more than two years before Petitioner filed his complaint.

Under the case of Ader v. Beverly Hills Hospital, 594 S.W. 2d 153 (TEX. CIV. APP. 1980), the statute of limitations for personal injury begins to run as soon as the tort is completed. Therefore, the statute of limitations for false arrest began to run as of the time Petitioner was arrested, which was June 4, 1974. The Ader case also tells us that the Texas statute of limitations for false imprisonment begins to run as soon as the imprisonment ends.

From the Petition for Writ of Certiorari it appears that the imprisonment which is being complained of ended with Petitioner's commitment hearing. Therefore, the statute of limitations for false imprisonment would begin to run as of September 20, 1974. Since

the complaint was filed September 19, 1977, it was filed well after the two year statute of limitaticns. It is also important to note that under Texas law once the statute of limitations began to run it could not be tolled even if the Petitioner later became of unsound mind. Kimmell v. Tipton, 142 S.W.2d 421 (TEX. CIV. APP. 1940).

From this brief it has become apparent that Pet tioner never filed a complaint which supported his cause of action, despite the District Court's giving him a chance to amend. It has also become apparent that Petitioners complaint, such as it was, was filed more than two years after the supposed tort was committed. Therefore, the complaint was filed after the statute of limitations had run.

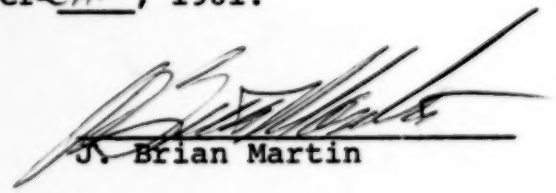
CONCLUSION

For all of these reasons, we urge that this court refuse to review this cause.

J. BRIAN MARTIN

CERTIFICATION

I hereby certify that a true and correct copy of this Brief in Opposition to the Petition for Writ of Certiorari was mailed to Petitioner with sufficient 1st class prepaid postage on September 24th, 1981.



J. Brian Martin